Wal-Mart Stores, Inc. and United Food and Commercial Workers International Union. Cases 28–CA–18255, et al.

November 15, 2004 ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND MEISBURG

The Charging Party United Food and Commercial Workers International Union's motion to strike pages 51–82 of Wal-Mart's answer to the Charging Party's Brief on Exceptions is granted to the extent noted herein.

Following the administrative law judge's April 26, 2004 decision in this matter, the Charging Party timely requested to exceed the 50-page limit for its brief in support of exceptions. On May 7, 2004, the Associate Executive Secretary notified the parties that the "Charging Party's request for permission to exceed page limitation on Brief in Support of Exceptions is granted not to exceed 85 pages." Thereafter, the Charging Party filed exceptions and a 70-page brief in support. In response, the Respondent filed an 82-page answering brief to which the Charging Party filed a 10-page reply brief.

The Charging Party motion to strike is premised on Respondent's failure to obtain permission to exceed the 50-page limit on briefs. Respondent admits it did not seek permission, but asserts that it telephoned an employee in the Executive Secretary's Office, whose name it could not recall, who allegedly verified that, like extensions of time to file documents, page enlargements granted at one party's request are shared by all parties. Further, Respondent claims that even if it misinterpreted

the foregoing discussion, the rationale for sharing an extension in a due date, noted in *P* & *M* Cedar Products, 282 NLRB 772 (1987), also applies to the sharing by all parties of a page enlargement.

Section 102.46(j) of the Board's Rules and Regulations provides in pertinent part that "any brief... shall not exceed 50 pages in length... unless permission to exceed that limit is obtained from the Board by motion, setting forth the reasons therefore, filed not less than 10 days prior to the date the brief is due." The Rule indicates that any party that desires additional pages beyond the 50-page limit must request its own permission from the Board, and that has been the Board's policy since 1982, the date the rule was established. The grant to one party of permission to enlarge a document does not automatically extend to documents of another party. To the extent that the Respondent was told otherwise by a Board representative, that advice was erroneous. Accordingly, we will grant the motion to strike.

However, we shall grant the Respondent permission to file a responsive brief that conforms to the 50-page limit.¹ Such a responsive brief is due in Washington, D.C., by close of business on November 29, 2004. The Charging Party may refile a reply to the resubmitted responsive brief by close of business on December 13, 2004.

¹ In granting permission, Chairman Battista relies in part on the Respondent counsel's assertion as to the telephone conversation that he allegedly had with the Board's offices. Inasmuch as there is no counter-assertion and there is no basis for discrediting the assertion made by counsel, Chairman Battista will assume arguendo that the assertion is correct